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No. 80-885

IN THE

Supreme Court of the United States

October Term, 1980

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION,
Respondent.

NATIONAL LABOR RELATIONS BOARD,
Petitioner

v.

MALLEABLE IRON RANGE COMPANY,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed contingent on the granting of the foregoing motion for leave to file said brief. The interest of the AFL-CIO in this case is set forth in that motion.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is simply stated: are employees who have access to information which their employer con-

siders confidential excluded for that reason from the definition of "employee" in § 2(3) of the National Labor Relations Act ("the Wagner Act"), as amended by the Labor Management Relations Act (the "Taft-Hartley Act" or "LMRA"). In our analysis "[w]e begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." *Consumer Product Safety Comm'n* v. *GTE Sylvania*, 447 U.S. 102, 108.

The NLRA contains in § 2(3) an express and unambiguous definition of the term "employee": "The term 'employee' shall include any employee . . ." with certain stated exceptions (for, e.g., "agricultural laborers," "supervisors" as defined in § 2(11) and "independent contractors"), but there is no claim in this case that the workers whose status is at issue fall within the terms of any of these exceptions. Under a literal reading of the Act, then, the workers in question are "employees."

In seeking to exclude workers with access to confidential information from the reach of the Act, respondents therefore necessarily ask the Court to create an implied exception to the statutory definition of "employee." Respondents accordingly bear a heavy burden:

> Under our constitutional framework, federal courts do not sit as councils of revision, empowered to rewrite legislation in accord with their own conceptions of prudent public policy. . . . Only when a literal construction of a statute yields results so manifestly unreasonable that they could not fairly be attributed to congressional design will an exception to statutory language be judicially implied. [*United States* v. *Rutherford*, 442 U.S. 544, 555 (1979)]

The court below, without adverting to the limits on the judicial power to imply exceptions to a congressional enactment, found that an exception for "confidential" employees was warranted by the legislative history of the LMRA's

express exclusion of "supervisors" from the definition of "employee." We thus turn to that legislative history to determine whether the failure to create a judicially-implied exception for confidential employees, would lead to "consequences obviously at variance with the policy of the enactment as a whole," *id.* at 552.

The 1947 Congress' purpose in excluding "supervisors" from the term "employee" was to draw the line between management and labor for purposes of the NLRA so as to assure that persons holding positions at the rank of foreman or above would be excluded from the Act. The House was of the view that the line should be drawn at a lower level so as to exclude confidential employees as well. The Senate, however, successfully insisted in conference on its more limited exclusion. The House Managers stated, "the conference agreement, in the definition of 'supervisor,' limits such term to those individuals treated as supervisor under the Senate amendment." 1 Legislative History of the Labor Management Relations Act, 1947 (GPO 1948) at 539. And the House Managers and Senator Taft in describing the conference agreement, both added that "the Senate amendment confined the definition of 'supervisor' to individuals generally regarded as foremen and persons of like or higher rank." *Id.* at 539, 1537. There is no evidence that Congress considered confidential employees—secretaries, typists, clerks, telephone operators, salesmen, engineers, and the like—to be of "higher rank" than foremen.

The court below, following a dictum in *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 283-284 (1974), reasoned that Congress believed that all confidential employees had been excluded from the Wagner Act by NLRB decisions and that Congress intended to freeze that interpretation of the Wagner Act into the law. In a long and consistent line of pre-1947 decisions, however, the National Labor Relations Board had held that the mere fact that an employee has access to "confidential" information is *insufficient* to deny that employee the protection of the Act but that employees

with access to confidential *labor relations* information are *not* eligible to engage in collective bargaining. Our research has revealed over 60 such decisions between 1941 and 1947 in which the Board adhered to this fundamental distinction.

In concluding that the Congress that enacted the LMRA completely misunderstood these Board's decisions, the court below relied exclusively on the statement of the House Managers, echoed by Senator Taft, explaining the conference report:

> In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provisions, as was done in the House bill, since the Board had treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect. [Leg. Hist. at 539-40.]

The most plausible interpretation of these words is that the House Managers and Senator Taft meant that employees involved in labor relations, personnel and employment functions, and confidential secretaries to such persons had been excluded by the Board from the Act's benefits. That is, in essence, where the Board law as of 1947 stood. Thus the Managers' statement provides no warrant for concluding that Congress intended to exclude *all* "confidential employees" from the NLRA.

More fundamentally, the House Managers' statement does not at all indicate an intent to freeze the Board law into place. In enacting the LMRA, Congress understood well the difference between legislating and not legislating. To read the statement as a basis for excluding all confidential employees is to negate the conference decision *not* to adopt the House definition of "supervisors", which, as noted above, would have expressly excluded confidential employees. The legislative materials relied on by the lower court, in short, simply do not constitute a binding in-

struction to the Board requiring the agency to treat all confidential employees as outside the Act. Thus, while *Bell Aerospace's* basic holding on the status of managerial employees is sound, the dictum in that case on the status of confidential employees (and the decision below which rests on that portion of the opinion) cannot be squared with congressional intent, and should be "recede[d] from" now that the issue of the status of confidential employees is "squarely presented." *NLRB* v. *Boeing Co.*, 412 U.S. 67, 72 (1973).

ARGUMENT

To understand the legislative history of the exclusion of "supervisors," as defined in § 2(11), from the NLRA's definition of "employee" (§ 2(3)) and the significance of that history for the question presented here concerning the status of confidential employees, it is first necessary to examine the background against which Congress legislated in enacting the exclusion of supervisors, as part of the LMRA. We begin, therefore, with the Wagner Act, and with the National Labor Relations Board's interpretation of that Act.

A. The NLRB's Pre-1947 Rules Concerning Confidential and Supervisory Employees.

Section 2(3) of the Wagner Act defined "employee" much as existing law does:

> The term 'employee' shall include any employee . . . but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

Notwithstanding the apparent clarity of this definition, within a few years after the enactment of the Act the Board was confronted with questions as to the applicability of the Act to various categories of employees, including confidential employees and supervisory employees.

The Board had little difficulty in concluding that the mere fact that an employee has access to information which the employer wanted to keep confidential is insufficient to deny that employee the protection of the Act. In *Bull Dog Electric Products Co.*, 22 NLRB 1043 (1940) the Board recognized as appropriate a bargaining unit of draftsmen and engineers notwithstanding the employer's argument that the members of the putative bargaining unit were not "employees within the meaning of the Act" because, *inter alia*, "they are entrusted with confidential matters." *Id.* at 1046. The Board reiterated that holding, one year later, in *Creamery Package Manufacturing Co.*, 34 NLRB 106 (1941), stating, "The possession of important information is of itself insufficient to justify exclusion from the right to collective bargaining." And by 1943 the Board viewed this as a well-established rule: "We have frequently held that the possession of information which the employer regards as secret is not of itself sufficient to justify depriving employees of their right to collective bargaining, since there is, in our opinion, no necessary conflict between self-organization and collective bargaining, and the faithful performance of duty." *Colonial Branch Co.*, 53 NLRB 846, 848 (1943).[1]

While deciding that employees with access to secret information are not generally excluded from the Act, the Board concluded that different treatment was required for a small group of "confidential" employees: those with access to confidential information *concerning the employer's labor relations.* In *Brooklyn Daily Eagle*, 13 NLRB 974, 986 (1939), the Board excluded from a bargaining unit the secretaries to the managing editor and editor of the newspaper-employer, but not the secretaries to the advertising manager, classified advertising manager and circulation manager:

> We take notice of the fact that in negotiating and in other dealings concerning grievances, the interests of

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[1] As to the well-established nature of the Board's rule, see also pp. 7-8, *infra*.

> a union and the management are ordinarily adverse. The nature of a personal secretary's work is such that much of the confidential material pertaining to the management passes through his or her hands. We believe that the management should not be required to handle such material through employees in a unit represented by the unit with which [management] is dealing.

Three years later the Board stated its position as follows: "[E]mployees are to be excluded from the bargaining unit on the ground of the confidential nature of their employment only if they have access to confidential information which relates directly to the problem of labor relations. . . ." *Poultrymen's Service Corp.*, 41 NLRB 444 (1942), *enforced*, 138 F.2d 204 (3d Cir. 1943). Indeed, as the Board made plain in *Electric Boat Co.*, 57 NLRB 1348 (1944):

> [T]he shop clerks in the course of their duties acquire such confidential knowledge of labor relations matter as would warrant their exclusion from any bargaining unit otherwise found to be appropriate and, equally, render inappropriate any unit composed solely of such employees.

See also Hoover Co., 55 NLRB 1321 (1944).[2]

The distinction the NLRB thus drew, between employees the Board defined as "confidential"—those with access to confidential, labor-relations information—and employees not so defined despite their access to other types of secret information, was quickly cemented into the law. *Our research has revealed over sixty cases, decided between 1941 and 1947, in which the Board adhered to this fundamental distinction*, including within bargaining units em-

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[2] While holding that employees with access to confidential, labor-related information had no right to bargain collectively (because there is no appropriate bargaining unit for such employees), the Board *rejected* the argument that such employees fell outside the statutory definition of "employee," *Bethlehem Steel Co.*, 63 NLRB 1230, 1232 (1945), and had no rights under the Act, *Southern Colorado Power Co.*, 13 NLRB 699, 710 (1939).

ployees of the latter type and excluding employees of the former type.[3] To be sure, in *Ford Motor Co.*, 66 NLRB 1317, 1322 (1946), the Board modified its definition of confidential employees slightly by holding that even employees with "access to confidential data bearing directly upon the employer's labor relations" would not be deemed to be "confidential employees," outside all bargaining units, and that "only those employees who assist and act in a confidential capacity to persons who exercise *'managerial' functions* in the field of labor relations" were excluded from collective bargaining. But while the exact dividing line was altered somewhat, the basic distinction between employees with labor relations information and other employees remained undisturbed.

At the same time that the Board was resolving the confidential employee issue, the Board also was grappling, far less consistently, with the supervisory employee question. The tortuous path of the Board's decisions in this area is well known to this Court, see *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 277-78 (1974), *Beasley* v. *Food Fair of North Carolina*, 416 U.S. 653 (1974) and need not be retraced here. Suffice it to say that after adopting several inconsistent positions, the Board, in *Packard Motor Co.*, 61 NLRB 4 (1945) finally held foremen could constitute an appropriate unit for collective bargaining. By a 5-4 vote, this Court affirmed. *Packard Co.* v. *Labor Board*, 330 U.S. 485 (1947).

B. The Case Bill

1. *House Consideration*

While *Packard Motor* was still pending before this Court, efforts began in Congress to overturn the Board's decision legislatively. In 1946, Representative Francis Case introduced the Case Bill, the precursor of the LMRA,[4] which

[3] The cases are listed in an Appendix to this brief.

[4] *See Complete Auto Transit Inc.* v. *Reis.* —— U.S. ——, 49 L.W. 4473, 4475 (1981); *Florida Power & Light* v. *Electrical Workers*, 417 U.S. 790, 811 n. 20 (1974); *Arroyo* v. *United States*, 359 U.S. 419, 425-427 (1959).

included a section intended to overrule *Packard Motor* by expressly excluding "supervisory employees" from the definition of "employee" under the Wagner Act. As originally drafted, the Case bill contained a broad definition of "supervisory employees."[5] On the floor of the House, however, several Representatives expressed concern over the breadth of the definition, *e.g.*, 92 Cong. Rep. 681 (Rep. Landis), 756 (Rep. McConnell), and an amendment was offered by Rep. Landis to narrow the definition and thereby assure that "[a]ll of those people who do manual productive work should have a right to collective bargaining," *id.* at 844.[6] Rep. Case endorsed the amendment, *ibid.* After brief debate it was approved, *id.* at 850. As thus amended, the Case bill passed the House, *id.* at 1070. No mention was made during the House debates of any dissatisfaction with the NLRB's treatment of confidential employees, nor was

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[5] "Supervisory employees: (a) As used in this section, the term 'supervisory employee' means an employee whose duties include—

(1) the direction or supervision of the activities of other employees; or

(2) the computation of the pay of other employees; or

(3) the determination of the time worked by other employees; or the supervision or administration of the factors on the basis of which the pay of other employees is computed."

[6] The Landis amendment produced the following definition (the changes are italicized):

"Supervisory employees: (a) as used in this section, the term 'supervisory employee' means an employee *whose primary duties consist of:*

(1) the direction or supervision of other employees *but who regularly do no productive manual* work; or

(2) the computation of the pay of other employees *and does not include persons who are selected by productive workers under established practice;*

(3) the determination of the time worked by other employees; or the supervision or administration of the factors on the basis of which the pay of other employees is computed."

any attempt made to overturn the settled Board law on that issue.

2. *Senate Consideration*

When the Case bill reached the Senate, it was referred to the Senate Committee on Education and Labor. The majority of that Committee concluded that there should not be a unitary solution to the problem of supervisory employees; the majority reasoned that "in small enterprises [where] the supervisor is identified with the management of the business," the supervisor should be excluded from collective bargaining, whereas in "gigantic industrial concerns," in which there is "little such identification" and in which "the supervisory employee . . . is no more secure than that of the rank-and-file production employee and . . . is equally at the mercy of management," the supervisors should be permitted to engage in collective bargaining. S. Rep. No. 1177, 79th Cong. 2d Sess. at 9-10 (1946). Accordingly, the majority concluded that "this subject is not a proper matter for legislative disposition" (*id.* at 9) and decided "to leave the matter where it now stands, in the hands of the Board for decision in individual cases as they arise." *Ibid.*

A minority of the Senate Committee(Senators Ball, Taft and Smith) disagreed. In their minority report (at 17) these Senators proposed an amendment which they described (at 4, 18) as "an improved version" of the Case bill "rewritten . . . so that it is restricted to true supervisory employees."[7] The minority justified its amendment

[7] "(a) As used in this section the term 'supervisory employee' means an employee whose primary duties consist of the direction or supervision of the activities of other employees but who regularly devotes less than 20 percent of his time to productive manual work and who acts as the employer's agent in disciplinary action regarding employees under his supervision, but does not include any employee within the purview of the Railway Labor Act.

(b) Hereafter, no supervisory employee shall have the special status or rights of an 'employee' as defined and provided in the National Labor Relations Act.

as an effort to distinguish workers from management by including supervisors in the latter category and thus exempting them "from the coverage of the NLRA".

> NLRB now says everybody is an "employee." Unless the line is drawn by law at the point between actual production workers and the lower ranks of actual management, where is the line to be drawn? Is the level of those subject to organization to be raised by successive steps until all employees of a company, including the president and other officers, are in the production union, and thus subject to union "discipline"? [*Id.* at 19].

On the floor of the Senate, Senator Ellender offered a revised version of the supervisors amendment on behalf of a number of Senators, including the Committee minority, 92 Cong. Rec. 5968.[8] Like the Committee minority, Senator Ellender stressed:

> I believe that the language of this amendment is

(c) Nothing herein shall prohibit a supervisory employee from becoming or remaining a member of a labor organization."

[8] The Ellender amendment defined supervisor as follows:

The term 'supervisor' means any individual having authority, in the interest of the employer—

(a) to hire, transfer, suspend, lay off, recall, promote, demote, discharge, assign, reward, or discipline any employee of the employer, or to adjust their grievances, or to effectively recommend any such action; or

(b) to determine, or make effective recommendations with respect to the amount of wages earned by any employees, or to apply, or to make effective recommendations with respect to the application of, the factors upon the basis of which the wages of any employees are determined, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; but such term shall not include any individual in an occupation of a character which under prevailing custom prior to July 1, 1935 was covered by collective-bargaining agreements.

> more clearly adapted . . . to express the real intent of Congress, since it would exclude from the protection of the act only those supervisors traditionally regarded both by industry and labor as being a part of management . . .
>
> Since there is considerable variance in industry with respect to the duties of supervisory employees, and since it was not the intent of this amendment to exempt any employee who does not possess genuine and important supervisory duties, the text of the amendment defines the term 'supervisor' in very much the same language which the Board itself has used . . . [*Ibid.*] [9]

The amendment was adopted by the Senate, *id.* at 5705. Thereafter, the bill passed the Senate, *id.* at 5739. As in the House, no member of the Senate expressed any dissatisfaction with the Board's treatment of confidential employees or any intent to disturb the Board's decisions.

The Senate bill was returned to the House, which concurred in the Senate amendments, *id.* at 5946. The bill was vetoed by President Truman, however, *id.* at 6674-78, who expressed disagreement with numerous provisions in the bill including the provision concerning supervisory employ-

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[9] Senator Hawkes, a cosponsor of the amendment, added the following justification:

> I believe that the Senator from Louisiana has devised a very good definition, which sets forth clearly the dividing point between those who are in management and those who are rated as regular employees. . . .
>
> It seems to me there is nothing more important than to separate these two groups . . .
>
> . . . I ask, how can a man bargain with himself successfully regarding the rights of others? . . .
>
> . . . In fact, I go so far as to say that I cannot personally see how a man can remain in the ranks of management, if he is affiliated in the ranks of a labor union. [*Id.* at 5699; see also *id.* at 5700 (Senators McClellan & Hawkes), *id.* at 5703 (Senator Ball).]

ees, *id.* at 6677.[10] The House failed to override the veto, *id.* at 6678.

C. The Labor Management Relations Act of 1947

Following the 1946 elections, in which the Republicans gained control of both houses, Congress resumed work on a labor bill.

1. *House Consideration*

The LMRA started in the House as the Hartley bill which was reported to the House after 31 days of hearings by the Education and Labor Committee. Like the Case bill, the Hartley bill included a provision to exempt "supervisors" from the definition of "employee" in the NLRA. The first paragraph of the definition of the term "supervisor" in the Hartley bill, as reported by the House Committee on Education and Labor, came almost verbatim from the Ellender amendment of the prior year.[11] But the Hart-

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[10] "This section would strip from supervisory employees the rights of self-organization and collective bargaining now guaranteed them. . . .

This complex question has long been under consideration by the National Labor Relations Board. The Board and the courts have pointed out that supervisory employees have a dual capacity. In dealing with the employees under them, they act for management. However, with respect to their own wages, hours of work, and other terms and conditions of employment, they act for themselves. The full right of supervisory employees to the benefits of collective bargaining is one that cannot be lightly thrown aside.

On the other hand, management is entitled to proper protection. Somewhere in the area of disagreement between the parties the line can be drawn with reasonable accuracy. There has been no attempt to draw that line in this section." [*Id.* at 6677]

[11] "The term 'supervisor' means any individual—

(A) who has authority, in the interest of the employer—

(i) to hire, transfer, suspend, lay off, recall, promote, demote, discharge, assign, reward, or discipline any individuals

ley bill also included within the definition of "supervisor" two additional paragraphs addressed *inter alia* to the status of employees with access to secret information:

> The term "supervisor" means any individual—
>
> (B) who is employed in labor relations, personnel, employment, police, or time-study matters or in connection with claim matters of employees against employers, or who is employed to act in other respects for the employer in dealing with other individuals employed by the employer, or who is employed to secure and furnish to the employer information to be used by the employer in connection with any of the foregoing; or
>
> (C) who by the nature of his duties is given by the employer information that is of a confidential nature and that is not available to the public, to competitors, or to employees generally, for use in the interest of the employers. [Leg. Hist. at 41]

The Committee Report accompanying the Hartley bill (H.R. Rep. 245), 80th Cong. Sess. (1947)) paid scant attention to these latter paragraphs of the definition of "supervisor." The thrust of the six-page discussion of this provision (at 13-18, 23) was to justify the proposal to exclude foremen from the Wagner Act.[12]

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employed by the employer, or to adjust their grievances, or to effectively recommend any such action; or

(ii) to determine, or make effective recommendations with respect to, the amount of wages earned by any individuals employed by the employer, or to apply, or to make effective recommendations with respect to the application of, or the factors upon the basis of which the wages of any individuals employed by the employer are determined, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment." [1 Legislative History of the Labor Management Relations Act, 1947 (GPO, 1948) at 40-41 (hereinafter "Leg. Hist. at ——").]

[12] The Committee Report traced the history of the Board's treatment of foremen, and decried at length the evils that flow "when the foremen unionize," *id.* at 305. Thus the Committee concluded:

Towards the end of the discussion, the House Report made relatively brief reference to the provisions of the "supervisor" definition which concerned persons with access to confidential information:

> Labor relations people negotiate labor agreements and handle disputes not settled in the shops. Employment and personnel people hire workers, and sometimes assign them to their departments. Plant policemen and guards prevent disorders and report misconduct of employees and of unions and their members. Time-study men help to fix the pace at which employees work and to determine the number of men the work calls for. Doctors, nurses, safety engineers, and adjusters handle

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> If management is to be free to manage American industry as in the past and to produce the goods on which depends our strength in war and our standard of living always, then *Congress must exclude foremen from the operation of the Labor Act, not only when they organize into unions of the rank and file and into unions affiliated with those of the rank and file, but also when they organize into unions that claim to be independent of the unions of the rank and file.*
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> • • •
>
> Supervisors are management people. They have distinguished themselves in their work. They have demonstrated their ability to take care of themselves without depending upon the pressure of collective action. No one forced them to become supervisors. They abandoned the 'collective security' of the rank and file voluntarily, because they believed the opportunities thus opened to them to be more valuable to them than such 'security.' It seems wrong, and it is wrong, to subject people of this kind, who have demonstrated their initiative, their ambition and their ability to get ahead to the levelling process of seniority, uniformity, and standardization that the Supreme Court recognizes as being fundamental principles of unionism. . . . It is wrong for the foremen, for it discourages the things in them that made them foremen in the first place. For the same reasons . . . it is wrong for industry, and particularly for the future strength and productivity of our country. [*Id.* at 305, 307-308; emphasis in original.]

> claims for disability benefits and investigate alleged hazards to safety and health.
>
> Other employees handle intimate details of the business that frequently are highly confidential. Some affect the employer's relations with labor. Others affect its relations with its competitors. In neither case should the employee's loyalty be divided. That which affects the company's relations with its competitors certainly ought not to be open to members of a union that deals also with the firm's competitor. [*Id.* at 307]

And at a later point, in commenting specifically on the definition of "supervisor," the Report added the following:

> The substantive language . . . is consistent with that of the Case bill, which passed Congress last year. The only important change concerns confidential employees. These are people who receive from their employers information that not only is confidential but also that is not available to the public, or to competitors, or to employees generally. Most of the people who would qualify as 'confidential' employees are executives and are excluded from the act in any event.
>
> The Board itself, normally excludes from bargaining units confidential clerks and secretaries to such people as these. But protecting confidential financial information from competitors and speculators, protecting secret processes and experiments from competitors, and protecting other vital secrets ought not to rest in the administrative discretion of the Board or the responsibility of whatever union happens to represent the employees. The bill therefore excludes from the definition of employees persons holding positions of trust and confidence whose duties give them secret information. [*Id.* at 314]

On the floor of the House, the proposal to exempt confidential employees from the Act was scarcely mentioned. In his opening statement, Rep. Hartley referred only to the exemption of foremen, *id.* at 613. Few proponents of the bill even noted the provision concerning supervisors, and those who did ignored its impact on confidential employees, *id.* at 646 (Rep. Gwinn); 868 (Rep. Meade). After several days debate, the Hartley bill passed the House.

2. Senate Consideration

While the House was at work on the Hartley bill, the Senate Committee on Labor and Public Welfare, chaired by Senator Taft, had before it a labor bill introduced by the chairman. The committee held six weeks of hearings, see Leg. Hist. at 1005, after which, as Senator Taft advised the Senate when the bill reached the Senate floor, the Committee attempted to "correct" each "injustice" found, *id.* at 1007.

Significantly, the bill the Senate Committee reported did not contain a provision aimed at the status of confidential employees. Rather, the Senate bill, like the Case bill, sought only to overturn *Packard Motor* by treating supervisors as "management" and thus removing them from the protection of the NLRA. The Committee explained:

> A recent development which probably more than any other single factor has upset any real balance of power in the collective-bargaining process has been the successful efforts of labor organizations to invoke the Wagner Act for covering supervisory personnel, traditionally regarded as part of management, into organizations composed of or subservient to the union of the very men they were hired to supervise. It was not until 1945, after several changes in position, that the National Labor Relations Board itself by divided vote finally decided that supervisory employees were covered by the National Labor Relations Act. This construction was recently upheld in the Supreme Court in the *Packard Motor Car case* (decided March 10, 1947). . . . This means, as Mr. Justice Douglas pointed out in his dissenting opinion—and as Board counsel conceded in argument—that unless Congress amends the act in this respect its processes can be used to unionize even vice presidents since they are not specifically exempted from the category of 'employees.'
>
> • • •
>
> By drawing a more definite line between management and labor we believe the proposed language has fully met some of the technical criticisms to the corresponding section referred to in the President's veto of [the Case] bill. [*Id.* at 409-11]

The Committee's definition of "supervisor" in the bill as reported closely tracked the language the Congress had adopted one year earlier;[13] as the Committee explained:

> In framing this definition, the committee exercised great care, desiring that the employees herein excluded from the coverage of the act be truly supervisory. The language in the proposed amendment is patterned after that contained in the Ellender amendment to last year's Case bill . . . [*Id.* at 423]

Indeed, prints of the committee's earlier drafts show that the committee considered and rejected broader definitions of the term "supervisor."[14]

On the floor of the Senate, proponents of the Taft bill stressed the limited nature of the provision on supervisors. In his opening statement for example, Senator Taft explained the provision as follows:

> It is felt very strongly by management that foremen are part of management; that it is impossible to manage a plant unless the foremen are wholly loyal to the management. . . .
>
> The definition of foremen is applied to persons who are strictly foremen. *We have not extended it to timekeeps or guards or any of the others about whom controversy has arisen.* [*Id.* at 1008-09]

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[13] The Committee bill defined supervisor as follows:

> (11) The term 'supervisor' means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [*Id.* at 104]

[14] The committee prints are contained in Labor Management Relations Act: Bills, Reports and Documents, Volume IV; a legislative history of the LMRA which apparently was compiled by this Court. *See, e.g.*, print of March 21, 1947, p. 7.

Senator Ellender likewise explained that the section was designed to overrule *Packard Motor* which, he stated, would permit "even the vice presidents working for a large corporation . . . [to] compel their employer to recognize them." (*Id.* at 1064). In a colloquy with Senator Aiken, the ranking majority member of the Labor and Public Welfare Committee, the narrowness of the provision was emphasized:

> Mr. AIKEN. The Senator will recall and I think it should be in the Record, that the definition of a supervisory employee was considerably changed in committee. As originally written into the bill, it included night watchmen, time-study men, all guards, *and many other types of workmen, who very clearly were not supervisors.*
>
> Mr. ELLENDER. The Senator is correct.
>
> Mr. AIKEN. The committee then more closely defined the word 'supervisor,' to include supervisors in fact, *rather than all the other groups of employees whom some employers would like to have had included in the list of supervisory employees,* so that such employees would not be able to join the union and gain the benefits of the Labor Relations Act.
>
> • • •
>
> Mr. AIKEN. In dozens of cases labor wanted nothing whatever to be done, while *industry wanted to include in the definition of 'supervisor' any number of occupational employees who had no business whatever being included in the definition of 'supervisor.' The committee simply had to work out for itself what it thought was a proper definition of a supervisor.*
>
> Mr. ELLENDER. The Senator is correct.
>
> • • •
>
> Mr. ELLENDER. Let me state to the distinguished Senator that the definition adopted by our committee is the one that has been put into practice for several years last past by the NLRB.
>
> Mr. AIKEN. This is correct. The committee said they should be supervisors, in fact.
>
> • • •

> Mr. AIKEN. On the other hand, going on the other side of the fence to an extreme, the Senator will recall that the original bill included in its category of supervisors those who guarded the health of the employees, and that a difference of opinion arose among lawyers who were in the committee room at the time, as to whether this included the washroom attendants or not, some saying yes, others saying no.
>
> Mr. ELLENDER. That is correct.
>
> Mr. AIKEN. In any case, they were not foremen. [*Id.* at 1064-65; emphasis added.]

Senator Ellender ended his discussion of the subject by noting, "The definition given in this bill is not nearly as broad as the one which was included in the Case bill of last year. . . ." *Id.* at 1068; see also *id.* at 1148 (Senator Smith). The committee's version of § 2(11) passed the Senate with only minor modifications.[15]

3. *The Conference Report and the Presidential Veto.*

The differences between the House and Senate bills on this and other issues were submitted to conference. The Conference Committee prepared a "Comparative Print" which included a "Statement of Major Points of Difference" between the House and the Senate. The definition of "supervisors" was one such difference:

> House—Excludes not only supervisors within the meaning of current Board formula but also persons whose duties require them to make determinations respecting the amount of wages earned, for example, inspectors, weighmasters etc. Definition also excludes guards, time study men, and confidential employees.
>
> Senate—Supervisory definition would exclude only bona fide supervisors.[16]

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[15] The Senate adopted an amendment by Senator Flanders to include within the definition of supervisor those with "responsibility to direct" employees. *Id.* at 1303-04.

[16] The Comparative Print, dated May 16, 1947, is reprinted in Labor Management Relations Act: Bills, Reports and Documents, *supra* n. 14.

In conference, the Senate prevailed on the scope of the supervisor provision; the Senate version, without the amendment made on the Senate floor (see n. 15, *supra*), was incorporated verbatim into the Conference Committee bill. In a written summary inserted in the Congressional Record, Senator Taft reported the conference action to the Senate as follows:

> (8) Supervisors: Both the House bill and the Senate amendment excluded supervisors from the individuals deemed to be employees for the purposes of the act. There was a sharp divergence between the House and Senate, however, with respect to the occupational groups which fell within this definition. *The Senate amendment, which the conference ultimately adopted, is limited to bona fide supervisors.* The House had included numerous other classes. There were generally (A) certain personnel who fix the amount of wages earned by other employees, such as inspectors, checkers, weighmasters, and time-study personnel, (B) labor relations personnel, police, and claims personnel, and (C) confidential employees. The Senate amendment confined the definition of supervisor to individuals generally regarded as foremen and employees of like or higher rank. [*Id.* at 1537; emphasis added]

And in remarks on the floor Senator Taft added:

> Mr. President, there are many minor provisions • • • We accepted a provision regarding plant guards. We had exempted foremen in the Senate bill, but we had not exempted plant guards. The House bill exempted plant guards, and also time-study employees and personnel forces. *We did not accept any of those provisions,* except that as to plant guards we provided that they could have the protection of the Wagner Act only if they had a union separate and apart from the union of the general employees. [*Id.* at 1544]

The House conferees, in their report conceded defeat: "The conference agreement, in the definition of 'supervisor,' limits such term to those individuals treated as

supervisor under the Senate amendment." *Id.* at 531.[17] And on the floor of the House, Rep. Hartley, rather than boasting of what had been accomplished in conference, lamented:

> I would much rather have seen the House bill as it originally passed enacted into law, but I want to see a bill that can be enacted into law passed by this Congress.
>
> • • •
>
> I also want to make it perfectly clear that there was no concession made except upon the assurance that it would provide us votes in another body to be certain that the legislation would be enacted into law. [*Id.* at 882, 84] [18]

As anticipated, the Taft-Hartley bill was vetoed by President Truman. *Id.* at 915-22. The veto was overriden by a vote of 331-83 in the House, *id.* at 922-23, and a vote of 68-25 in the Senate, *id.* at 1057. Accordingly, the LMRA became law.

D. The Lessons of the Legislative History

The lessons which emerge from this legislative history, we submit, are as follows:

First, it is clear that the purpose of § 2(11) was to overturn *Packard Motors* and to do so by drawing the line between management and labor so as to assure that persons holding positions at the rank of foreman or above would be excluded from the Act.

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[17] The House conferees, and Senator Taft in his written statement, explained in identical terms the decision not to take legislative action with respect to confidential employees; we quote that explanation and discuss its significance *infra* at 26-29.

[18] The concern with securing sufficient Senate votes to override a veto had been a recurring theme in the Senate debates, with Senators who themselves favored additional provisions arguing against adoption of such provisions because of the need to obtain two-thirds approval of the bill. *See, e.g.,* Leg. Hist. at 1077 (Sen. Ellender); 1365-66 (Sen. Taft). *Cf., Pipefitters* v. *United States,* 407 U.S. 385, 409 (1972).

Second, the issue of confidential employees was, at most, a peripheral concern; it was not mentioned at all during the consideration of the Case bill, received scant attention in the House Committee report accompanying the Hartley Bill, and was not discussed during the debates in the House and the Senate in 1947 or in the Senate Committee Report.

Third, while the *House* was at least willing to go along with the Hartley Bill's exclusion of employees with access to confidential information from the reach of the NLRA, the Senate was never asked to do so—and never expressed a willingness (let alone a desire) to do so. To the contrary, the *Senate* was expressly told by Senator Taft that "the definition of foreman is applied to persons who are strictly foremen. *We have not extended it to* timekeepers or guards, or *any of the others about whom controversy has risen*" (p. 18 *supra*). Thus, the issue put to the Senate was whether to group foremen with management and to exclude "management" as thus demarcated from the NLRA. And the Senate agreed to that course only after repeated assurances that the bill before it had been very narrowly drawn.

Finally, the ultimate decision Congress made was not to legislate with respect to the subject of confidential employees. In conference, the House receded from its version of § 2(11). And Senator Taft thus was able to assure the Senate: "We did not accept any of [the House] provisions" that would have excluded other than genuinely supervisory employees (p. 21 *supra*).

Thus, the evolution of the statutory words confirms their plain meaning—the LMRA does not expressly or by fair implication embody a decision by Congress to exclude confidential employees from the NLRA, as amended. There is no warrant here for the Court to rewrite the Act that Congress wrote.

E. Bell Aerospace and Its Implications

The court below decided that it was required by this Court's decision in *Bell Aerospace* to rewrite the Act. As

we proceed to show, however, the holding of *Bell Aerospace* —that "managerial employees" are excluded from the Act —is entirely consistent with the legislative history set forth above. Much of the reasoning of *Bell Aerospace* is likewise consistent with that history. And while there is dictum in *Bell Aerospace* which admittedly is inconsistent with our analysis of that history, that dictum was not necessary to the Court's decision, does not, in fact, accurately reflect the legislative history, and should not be followed here.

1. *Bell Aerospace's* holding rests on the proposition that in enacting an exclusion for foremen, Congress intended to draw the dividing line between management and workers and to exclude from collective bargaining not just foremen but all employees "higher in the managerial structure" as well. 416 U.S. at 283. The legislative history of § 2(11) abundantly supports that proposition. The proponents of an exemption for supervisors made clear that this was their intent during the consideration of the Case bill:

> Unless the line is drawn by law at the point between actual production workers and lowest rank of actual management, where is the line to be drawn? Is the level of those subject to organization to be raised by successive stages until all employees of a company, including the president and other officers, are in the production union.... [P. 11 *supra.*]

The Senate Committee was even clearer in this regard in reporting the Taft bill, in 1947, explaining that § 2(11) would "draw[] a more definite line between management and labor" and explaining that *Packard Motor* "means, as Mr. Justice Douglas pointed out in his dissenting opinion—and as Board counsel conceded in argument—that unless Congress amends the act in this respect its processes can be used to unionize even vice presidents since they are not specifically exempted from the category of 'employees'." (p. 17 *supra.*) And, perhaps most significantly, both the House Managers, in reporting on the conference to the House, and Senator Taft, in reporting on the conference to the Senate, explained the Senate amendment, which the

confined the definition of 'supervisor' to individuals generally regard as foremen and *persons of like or higher rank*" (p. 21 *supra*). In *Bell Aerospace* the Court understood this legislative history as we do. *See* 416 U.S. at 281-282.

While Congress intended, in enacting § 2(11), to exclude employees "higher" in the managerial structure than foremen, there is no evidence that Congress likewise intended § 2(11) to exclude confidential employees. Confidential employees—secretaries, typists, clerks, telephone operators, salesmen, engineers and the like—were not, indeed, could not fairly be, considered to be "higher" than foremen in the managerial structure. Thus, the reasoning of *Bell Aerospace* does not require an exclusion for confidential employees.

2. In dictum, the *Bell Aerospace* Court suggested that, independent of the effect of § 2(11), Congress, in 1947, believed that confidential employees had been excluded from the Wagner Act by NLRB decisions, and that Congress intended to freeze that interpretation of the Wagner Act into the law. 416 U.S. at 283-284. The court below based its decision entirely on that portion of *Bell Aerospace*. But that aspect of the opinion—which was not necessary to the decision in *Bell Aerospace*—cannot be squared with the legislative materials and should not be followed here.

The *Bell Aerospace* dictum is based exclusively on the House Managers' statement—the substance of which was repeated verbatim in Senator Taft's written description for the Senate—explaining the Conference Committee's decision *not* to legislate with respect to confidential employees. The statement first noted that the House bill had defined "supervisor" to include:

> (A) certain personnel who fix the amount of wages earned by other employees, such as inspectors, checkers, weighmasters, and time-duty personnel; (B) labor relations personnel, police and claims personnel, and (C) confidential employees. [Leg. Hist. at 539, 1537.]

The statement then noted that the Senate amendment—which "confined the definition of 'supervisor' to individuals generally regarded as foremen and persons of like or higher rank" *(ibid)*—had been accepted by the Conference Committee. The statement concuded:

> In the case of persons working in the labor relations, personnel and employment departments, it was not thought necessary to make specific provision, as was done in the House bill, since the Board has treated, and presumably will continue to treat, such persons as outside the scope of the act. This is the prevailing Board practice with respect to such people as confidential secretaries as well, and it was not the intention of the conferees to alter this practice in any respect. [Leg. Hist. at 539-40, 1537]

In *Bell Aerospace* the Court read this statement to mean that (a) Congress "clearly thought that the Act did not cover 'confidential employees' even under a broad definition of that term," 416 U.S. at 283-84 n. 12; and (b) Congress intended to "impliedly exclude[ ]" such persons, *id.* at 283. As we proceed to show, each of these conclusions is in error.

(a) The quoted language does not support the inference that the House Managers or Senator Taft completely misunderstood long-settled Board law and thought that *all* confidential employees had been excluded from the Act. The most natural interpretation of these words is that the House Managers and Senator Taft meant that employees involved in labor relations, personnel and employment functions, *and confidential secretaries to such person,*[19] were excluded from the Act's benefits. This is, after all, in essence where

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[19] The use of the phrase "confidential *secretaries*" could not have been inadvertent, since just a few sentences earlier the statement described the House bill as having excluded "confidential *employees*" generally.

the Board law as of 1947 stood.[20] And there is no reason to assume that after the lengthy evolution of the LMRA, the House Managers and Senator Taft were still so hopelessly confused about the state of Board law as to believe that—notwithstanding a long and unbroken set of Board decisions extending back at least to 1939—all confidential secretaries (or all confidential employees) were treated by the NLRB as outside the Act.[21]

Thus, even if the statement by the House Managers and Senator Taft supported the conclusion that Congress intended to freeze its understanding of NLRB decisions into the NLRA—and we show below that it does not—the most that can be fairly said is that Congress intended to impliedly exclude those working in labor relations, personnel

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[20] To be sure, the Board had not held that persons whom it defined as "confidential employees" (i.e., those with access to confidential, labor relations information or, under *Ford Motor*, those "who assist and act in a confidential capacity to persons who exercise 'managerial functions in the field of labor relations'") were without any protection under the Wagner Act. But the Board had held that these employees were "depriv[ed] of their right to collective bargaining" (p. 5, *supra*). *i.e.* were excluded from the Act for purposes of collective bargaining. Thus the Managers' statement, while somewhat imprecise, constitutes a fair shorthand description of the state of the law in 1947. Indeed, the Board itself had used similar shorthand, asserting that confidential employees, as the Board defined that term, were "outside the protection of the Act," *General Motors Corp.*, 53 NLRB 1096 (1943); *see also Armour & Co.*, 49 NLRB 688, 690 (1943); *Armour & Co.*, 54 NLRB 1462, 1465 (1944).

[21] In suggesting otherwise in *Bell Aerospace*, the Court was apparently unaware of the history of NLRB decisions with respect to confidential employees. (The briefs in *Bell Aerospace* had not focused on that issue.) Thus the Court in *Bell Aerospace* semed to view *Ford Motor Co.* as having worked a fundamental change in preexisting law, see 416 U.S. at 283-84 n. 12, whereas in fact that decision simply refined long-standing Board precedent (see pp. 4-7, *supra*).

and employment departments and confidential secretaries *to such persons.*

(b) More fundamentally, the statements by the House Managers and Senator Taft do not indicate that Congress intended to freeze the Board's decisions, as Congress understood them, into place, thereby precluding further developments in this area in the light of experience. In enacting the LMRA Congress understood well the difference between legislating and not legislating. Congress chose to amend the definition of "employee" to exclude "supervisors" precisely because Congress was not content to leave this matter to the Board's discretion, notwithstanding the argument of the opponents of the change that the subject was best left for the NLRB to resolve on a case-by-case basis (pp. 8-9 *supra*). Similarly, the House Committee had proposed an express exclusion for confidential employees because "protecting confidential financial information . . . protecting secret processes and experiments . . . and protecting other vital secrets *ought not to rest in the administrative discretion of the Board*" (p. 16 *supra*). But the House was unable to persuade the Senate to accept the House version of § 2(11), and thus the matter of confidential employees was left where it had been: "in the administrative discretion of the Board."

Nothing in the House Managers' statement, which Senator Taft echoed, is to the contrary. The Managers, after explaining how the Board treated "persons working in the labor relations, personnel and employment departments" and "confidential secretaries" simply stated that "*presumably* [the NLRB] will continue to treat such persons as outside the scope of the Act," and that "it was not the intention of the conferees to alter this practice [of the NLRB] in any respect." Certainly that is a measured expression of approval of Board practice. But the Managers did not state that the Board would be *required* to treat any confidential employee as outside the NLRA. Indeed, the use of the word "presumably" indicates that they were not

issuing an instruction as to how the NLRB must proceed in the future.

Any other reading of the House Managers-Senator Taft statement would be inconsistent with the legislative history as a whole. There is nothing in the legislative history to suggest that the Senate favored excluding confidential employees; indeed, every indication is to the contrary. The Senate was constantly reassured that § 2(11) was a narrow provision which dealt only with foremen, and with higher ranking managers, but not with "any of the others about whom controversy has arisen" (p. 18 *supra*). Yet the *Bell Aerospace* dictum reads the words of the House Managers, *explaining why legislation was not being enacted,* to have worked a fundamental change in the Wagner Act—even though the Senate never voted for such a change.

The proper reading of the legislative history then is that Congress in 1947 did not disturb at all the Board law with respect to confidential employees. And even if we are wrong in this view, the most that can be said is that Congress in 1947 intended to freeze the then existing law, under which employees with access to secret information were not considered outside the Act (or even outside of an otherwise appropriate bargaining unit) unless the employee had access to confidential *labor relations* information. In either event, the decisions below are erroneous and should be reversed.

• • •

The sum of the matter is this: we fully accept the basic holding of *Bell Aerospace* with regard to managerial employees; it states a logical implication from Congress' express exclusion of "supervisors" because the latter were understood by Congress to be at a lower level of the managerial hierarchy. Nor do we at all question the approach to statutory construction in *Bell Aerospace*—that Congress can legislate by freezing what Congress understands to be administrative practice into law and to that extent curtail-

ing future administrative discretion. *See* 416 U.S. at 289. Our disagreement is only with the suggestion in *Bell Aerospace* that Congress fundamentally misunderstood the law concerning confidential employees in 1947 and the further suggestion that Congress intended to codify its misunderstanding of that law. As we have shown, those suggestions do not square with the governing legislative materials.

In *Bell Aerospace* the Court was not confronted with the question of the rights of employees who are not in the managerial hierarchy. The *Bell Aerospace* "*dicta* is therefore not controlling now that 'the very point is presented for decision'. *Cohens* v. *Virginia*, 6 Wheat. 264, 399". *Third National Bank* v. *Impac Limited, Inc.*, 432 U.S. 312, 319 (1977). "[B]eing squarely presented with the issue [of the status of confidential employees] in this case [the Court should] recede from the implications of the *dicta* in" *Bell. NLRB* v. *Boeing Co.*, 412 U.S. 67, 72 (1937). See also *J. Truett Payne Co.* v. *Chrysler Motors Corp.*, No. 79-1944, Slip. Op. p. 5, n.3, (May 18, 1981).

CONCLUSION

For the foregoing reasons, the decisions below should be reversed.

Respectfully submitted,

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APPENDIX

In the 61 pre-1947 decisions listed below, the National Labor Relations Board followed the principles concerning employees with access to confidential information set forth at pp. 4-7 of the Brief:

Brooklyn Daily Eagle, 13 NLRB 974 (1939)
Bull Dog Electric Products Co., 22 NLRB 1043 (1940)
Western Union Telegraph Co., 30 NLRB 679 (1941)
National Fireworks, Inc., 33 NLRB 1115 (1941)
Creamery Package Manufacturing Co., 34 NLRB 106 (1941)
Warner Brothers Pictures, Inc., 35 NLRB 744 (1941)
Western Union Telegraph Co., 36 NLRB 1066 (1941)
Chrysler Corp., 36 NLRB 157 (1941)
General Motors Corp., 37 NLRB 441 (1941)
Montgomery Ward & Co., 38 NLRB 297 (1942)
Chrysler Detroit Co., 38 NLRB 313 (1942)
Cincinnati Times-Star Co., 39 NLRB 39 (1942)
Poultrymen's Service Corp., 41 NLRB 444 (1942)
Polish National Alliance, 42 NLRB 1374 (1942)
Bendix Products Division, 43 NLRB 912 (1942)
Paramount Pictures, Inc., 45 NLRB 116 (1942)
Murray Corp., 45 NLRB 854 (1942)
Puget Sound Bridge & Dredging Co., 46 NLRB 1071 (1943)
Bohn Aluminum & Brass Corp., 47 NLRB 1229 (1943)
Armour & Co., 49 NLRB 688 (1943)
Bethlehem-Sparrows Point Shipyard Inc., 49 NLRB 762 (1943)
Maryland Drydock Co., 50 NLRB 363 (1943)
Firestone Tire & Rubber Co., 50 NLRB 679 (1943)
Boston Edison Co., 52 NLRB 118 (1943)
Republic Steel Corp., 51 NLRB 1228 (1943)
St. Johns River Shipbuilding Co., 52 NLRB 12 (1943)
General Motors Corp., 52 NLRB 649 (1943)
Babcock & Wilcox Co., 52 NLRB 900 (1943)
Potash Co., 53 NLRB 441 (1943)
General Motors Corp., 53 NLRB 1094 (1943)
New York Telephone Co., 53 NLRB 307 (1943)
Coolerator Co., 53 NLRB 461 (1943)
Colonial Branch Co., 53 NLRB 846 (1943)
U.S. Smelting, Refining & Mining Co., 53 NLRB 84 (1943)

Republic Aviation Corp., 54 NLRB 539 (1944)
Consolidated Vultee Aircraft Corp., 54 NLRB 103 (1943)
Armour & Co., 54 NLRB 1462 (1944)
General Cable Corp., 55 NLRB 1143 (1944)
West Penn Power Co., 55 NLRB 1356 (1944)
Hoover Co., 55 NLRB 1321 (1944)
Spicer Manufacturing Co., 55 NLRB 1491 (1944)
Bell Aircraft Corp., 56 NLRB 1356 (1944)
General Motors Corp., 56 NLRB 1547 (1944)
Utah Copper Co., 57 NLRB 308 (1944)
Electric Boat Co., 57 NLRB 1348 (1944)
Chrysler Corp., 58 NLRB 235 (1944)
American Steel & Wire Co., 58 NLRB 253 (1944)
U.S. Automatic Corp., 58 NLRB 662 (1944)
Houdaille-Hershey Corp., 59 NLRB 1292 (1944)
South Bend Lathe Works, 59 NLRB 562 (1944)
Aluminum Co. of America, 60 NLRB 338 (1945)
Consolidated Vultee Aircraft Corp., 60 NLRB 525 (1945)
Pacific Gas & Electric Co., 61 NLRB 564 (1945)
Magnolia Pipe Line Co., 61 NLRB 723 (1945)
Continental Steel Corp., 61 NLRB 97 (1945)
American Smelting and Refining Co., 61 NLRB 506 (1945)
Bethlehem Steel Co., 63 NLRB 1230 (1945)
Ford Motor Co., 66 NLRB 1317 (1946)
St. Louis Independent Packing Co., 67 NLRB 543 (1946)
Tennessee Gas & Transmission Co., 67 NLRB 1375 (1946)
Browne & Sharpe Manufacturing Co., 68 NLRB 487 (1946)